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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

S.C.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F065815

(Super. Ct. Nos. JD128185-00 &
JD128186-00)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

Michelle R. Trujillo, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Cornell, J., and Detjen, J.

S.C. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ terminating her reunification services and setting a section 366.26 hearing as to her four- and three-year-old daughters. Mother contends the juvenile court erred in finding there was not a substantial probability the children could be returned to her custody. She seeks an order from this court directing the juvenile court to vacate its section 366.26 hearing and to continue reunification services. We decline to do so and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In February 2012, the Kern County Department of Human Services (department) took mother's two daughters, then three and two years of age, into protective custody after mother and her boyfriend, Daniel, engaged in a domestic violence dispute and after many attempts on the part of the department to help mother protect herself and the children from him.

The department filed dependency petitions on behalf of the children alleging that mother's ongoing domestic violence with Daniel placed her children at a substantial risk of harm. The petitions also alleged that mother previously engaged in domestic violence with the children's father, R.C. (hereafter "the father").

The juvenile court detained the children pursuant to the petitions and, in March 2012, mother submitted the matter on jurisdiction. The juvenile court adjudged the children dependents and ordered mother and the father to participate in reunification services. Mother's services plan required her to participate in counseling for parenting, anger management and domestic violence as a victim and submit to random drug and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

alcohol testing. The juvenile court further ordered mother to enroll in substance abuse counseling if she tested positive for drugs or alcohol. The court set the six-month review hearing for September 2012.

By September 2012, mother had completed anger management counseling and regularly visited the children under supervision. She also enrolled in parenting and domestic violence programs, but stopped attending parenting in May and domestic violence in August. She had 14 more sessions to complete the domestic violence program. Mother did not, however, participate regularly in alcohol and drug testing. She failed to test five times between April and July, resulting in presumptive positive results. She tested in May and the results were reported as suspicious. When the social worker confronted mother with the suspicious results, she became angry and said she did not use drugs and did not know how to get them. She finally admitted using “some pills” for which she did not have a prescription. At the time she was pregnant with Daniel’s baby.

In June 2012, mother enrolled in substance abuse counseling but left a week later. She told the social worker she was homeless and lived with Daniel in a motel but would not provide the name of the motel. In late June, she was arrested for threatening the social worker. She pled nolo contendere to a charge of threatening an employee and spent 19 days in jail.

In its report for the six-month review hearing, the department recommended that the juvenile court terminate services for mother and the father and set a section 366.26 hearing. The department reported that the children were placed together in foster care.

The six-month review hearing was continued to a later date in September 2012. Meanwhile, the department filed a supplemental report stating that mother was scheduled to complete the parenting course in October 2012 and that her attitude had improved. The department also reported that mother completed 12 sessions of a 26-week domestic violence counseling program and that she was reportedly benefitting from the program,

but that her progress was “marginal at best.” The department also attached the negative results of her May 2012 drug test previously reported as “suspicious.”

Mother testified at the contested six-month review hearing that she completed the parenting program and that she had difficulty drug testing because she was homeless.

At the conclusion of the hearing, the juvenile court terminated mother’s reunification services after finding there was not a substantial probability the children could be returned to her custody. This petition ensued.

DISCUSSION

Mother contends that the juvenile court erred in finding that she failed to regularly participate in and make substantive progress in her court-ordered services. Thus, she further contends, the juvenile court erred in terminating her reunification services. Alternatively, she contends, the juvenile court’s order terminating her reunification services is error because there was a substantial probability the children could be returned to her custody by the 12-month review hearing. We disagree.

I. Regular Participation and Substantive Progress

Under section 366.21, subdivision (e), the juvenile court may terminate reunification services at the six-month review hearing where, as here, the children were removed from parental custody at the same time and one of the children was under the age of three, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in court-ordered services. (§ 366.21, subd. (e).)

Mother argues that she regularly participated in her court-ordered services, citing her completion of parenting and anger management counseling and over half of her domestic violence counseling sessions. In addition, she argues she cannot be faulted for not participating in substance abuse counseling because it was not a court-ordered service. Mother, however, misstates the juvenile court’s order with respect to substance

abuse counseling. The court ordered her to enroll in substance abuse counseling if she tested positive for drugs. Though mother did not test positive in the sense of providing a urine sample which yielded a positive result for drugs, nevertheless, she failed to drug test when called, which is considered a presumptive positive drug test. Consequently, she was required by court order to enroll in substance abuse counseling, which she did. However, she also stopped participating in substance abuse counseling before completing it. She did the same with domestic violence counseling. Thus, on that evidence, the juvenile court could find that she failed to regularly participate in her court-ordered services.

The evidence also supports the juvenile court's finding that mother failed to make substantive progress in her court-ordered services. Mother completed anger management and then threatened to injure the social worker, which resulted in a criminal conviction and jail sentence. In addition, she insisted on maintaining a relationship with Daniel despite their history of abuse, and she resisted drug treatment.

II. Substantial Probability of Return

Section 366.21, subdivision (e) requires the juvenile court to continue services to the 12-month review hearing if the court finds there is a substantial probability the child will be returned to parental custody by the hearing date. In order to find a substantial probability of return, the juvenile court must find not only that the parent regularly visited the child as occurred here, but also that the parent made significant progress in resolving the problems that led to the child's removal from the home and demonstrated the capacity and ability to complete the case plan objectives and provide for the child's safety, protection, and physical and emotional well-being. (§ 366.21, subd. (g)(1)(A)-(C).)

Mother contends that she could have completed domestic violence and substance abuse counseling before the 12-month review hearing and, thus, the juvenile court erred in not finding a substantial probability of return. On review, we determine whether

substantial evidence supports the finding that the juvenile court made not whether evidence supports a contrary finding. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Here, substantial evidence supports the juvenile court's finding there was not a substantial probability of return. Mother's children were removed from her because of her ongoing domestic violence. After six months of services, she was still in a relationship with her abuser, had not completed domestic violence counseling, and made only marginal progress in the portion that she had completed. Moreover, after completing anger management, she threatened to assault the social worker. Thus, mother demonstrated both an unwillingness to participate in services and questionable ability to benefit from them. Under those circumstances, there was no reason for the juvenile court to believe that mother would better utilize services if they were continued or that she would make greater efforts to provide her children a safe home. We find no error on this record.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.